

Rec'd 12/17/98 @ 9:20 A.M.
Jaye Jeter Bragg

ORIGINAL

FEDERAL COMMUNICATIONS COMMISSION

In Re Applications of:) MM DOCKET No.: 98-66
)
HICKS BROADCASTING OF INDIANA, LLC)
)
Order to Show Cause Why the)
License for FM Radio Station)
WRBR(FM), South Bend, Indiana,)
Should Not Be Revoked;)
)
AND)
)
PATHFINDER COMMUNICATIONS CORP.)
)
Order to Show Cause Why the)
License for FM Radio Station)
WBYT(FM), Elkhart, Indiana)
Should Not Be Revoked;)

Volume: 11

PAGES: 1638 through 1838

PLACE: Washington, D.C.

DATE: November 4, 1998

HERITAGE REPORTING CORPORATION

Official Reporters
1220 L Street, NW, Suite 600
Washington, D.C.
(202) 628-4888

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Re Applications of:) MM DOCKET No.: 98-66
)
HICKS BROADCASTING OF INDIANA, LLC)
)
Order to Show Cause Why the)
License for FM Radio Station)
WRBR(FM), South Bend, Indiana,)
Should Not Be Revoked;)
)
AND)
)
PATHFINDER COMMUNICATIONS CORP.)
)
Order to Show Cause Why the)
License for FM Radio Station)
WBYT(FM), Elkhart, Indiana)
Should Not Be Revoked;)

Courtroom 1, Room 227
FCC Building
2000 L Street, N.W.
Washington, D.C.

Wednesday,
November 4, 1998

The parties met, pursuant to the notice of the
Judge, at 9:00 a.m.

BEFORE: HON. JOSEPH CHACHKIN
Administrative Law Judge

Heritage Reporting Corporation
(202) 628-4888

APPEARANCES:

On behalf of the Mass Media Bureau:

JAMES SHOOK, ESQ.
ROY W. BOYCE, ESQ.
KATHRYN S. BERTHOT, ESQ.
Mass Media Bureau
Enforcement Division
Federal Communications Commission
2025 M Street, Northwest
Suite 731F
Washington, D.C. 20554
(202) 418-1454

On Behalf of Hicks Broadcasting:

ERIC T. WERNER, ESQ.
ERWIN G. KRASNOW, ESQ.
DOUGLAS W. HALL, ESQ.
Verner Liipfert, Bernhard, McPherson & Hand
901 15th Street, Northwest
Washington, D.C. 20005-2301
(202) 371-6062

On Behalf of Pathfinder:

MICHAEL J. GUZMAN, ESQ.
ERIC L. BERNTHAL, ESQ.
EVERETT C. JOHNSON, JR., ESQ.
ALLEN GARDNER, ESQ.
Latham & Watkins
1001 Pennsylvania Avenue, Northwest
Suite 1300
Washington, D.C. 20004-2505
(202) 637-2200

Heritage Reporting Corporation
(202) 628-4888

APPEARANCES: (Continued)

On Behalf of Niles Broadcasting:

WILLIAM CRISPIN, ESQ.
Crispin & Brenner, P.L.L.C
901 15th Street, Northwest
Suite 440
Washington, D.C. 20005
(202) 828-0155

On Behalf of Edward J. Sackley III:

KATHRYN R. SCHMELTZER, ESQ.
Fisher Wayland Cooper Leader
& Zaragoza, L.L.P.
2001 Pennsylvania Avenue, Northwest
Suite 402
Washington, D. C. 20006-1851
(202) 775-3547

I N D E XWITNESSES:DIRECTCROSSREDIRECTRECROSSVOIR
DIRE

Eric Brown, Jr.
(Resumed)

1643 1744
 1759
 1819
 1825
 1834

E X H I B I T SIDENTIFIEDRECEIVEDREJECTEDMass Media Bureau:

19	(Prev.)	1757
21	(Prev.)	1774
36	(Prev.)	1799
27	(Prev.)	1800
28	(Prev.)	1802
29	(Prev.)	1803
31	(Prev.)	1804
33	(Prev.)	1806
52	(Prev.)	1807
53	(Prev.)	1808
55	(Prev.)	1809
56	(Prev.)	1810
60	(Prev.)	1811
66	(Prev.)	1812
80	(Prev.)	1814

Pathfinder:

65	(Prev.)	1676
66	(Prev.)	1676
17	(Prev.)	1709
19	(Prev.)	1714
22	(Prev.)	1715
15	(Prev.)	1716
18	(Prev.)	1718
21	(Prev.)	1719
16	(Prev.)	1721
20	(Prev.)	1723
13	(Prev.)	1765

I N D E XE X H I B I T SIDENTIFIEDRECEIVEDREJECTEDHicks Broadcasting:

10

(Prev.)

1711

Hearing Began: 9:00 a.m.
Recess Began: 12:10 p.m.

Hearing Ended: 4:00 p.m.
Recess Ended: 1:30 p.m.

1 P R O C E E D I N G S

2 JUDGE CHACHKIN: On the record.

3 MR. WERNER: Good morning, Mr. Brown.

4 THE WITNESS: Good morning.

5 Whereupon,

6 ERIC BROWN, JR.

7 having been previously duly sworn, was recalled as a witness
8 herein, and was examined and testified further as follows:

9 DIRECT EXAMINATION (Resumes)

10 BY MR. WERNER:

11 Q When we left off yesterday we were talking about
12 the series of meetings or telephone calls that you had had
13 with Mr. Hicks and Mr. Dille in September of 1993, and you
14 had been telling us a few of the things by way of background
15 that you had learned about the WRBR transaction as it had
16 matured up to that point between Mr. Booth and Mr. Dille.
17 I would like to move on.

18 As of that initial series of telephone calls or
19 meetings, what was your understanding concerning the status
20 of the deal between Mr. Dille and Mr. Booth?

21 A Well, I understood that there was a proposal on
22 the table but that there was no final agreement.

23 Q Had there been negotiations?

24 A Yes, there had.

25 Q Did you understand whether they had reached the

Heritage Reporting Corporation
(202) 628-4888

1 point of any basic terms of the agreement?

2 A Yes, they had reached some agreement on the terms.

3 Q And what were they insofar as you were aware of at
4 that point?

5 A As I recall, the purchase price of \$660,000 had
6 been agreed upon. The terms of payment that the seller
7 would have a note payable over a period of time. I don't
8 know whether the exact payment terms had been agreed upon.
9 Those were --

10 Q What are the -- I'm sorry. Go ahead.

11 A And I don't know whether any documents had been
12 drawn by that time, but if they had, it would have been the
13 first set.

14 Q But you understood that it was going to be a
15 seller financed transaction?

16 A Yes, a completely seller financed transaction.

17 Q As between Mr. Dille and Mr. Hicks, had the
18 involvement of Mr. Dille's children as possible participants
19 in the entity to acquire WRBR been discussed?

20 A I believe it had been discussed or Mr. Dille
21 mentioned it to me at one of those meetings, yes.

22 Q Now, at the same time had there been any
23 discussions -- well, what was the status of the discussions
24 between Mr. Dille and Mr. Hicks as of that late period in
25 September?

1 A I guess I don't understand your question.

2 Q Well, they had been -- they had been talking.

3 Dave Hicks came to you in September, and you had indicated
4 yesterday he had told you that he was interested in the
5 South Bend transaction and that he gave you a background
6 report on some of the information that he had learned from
7 Mr. Dille. And then you said that Mr. Dille spoke to you by
8 phone and had given you some additional information, and
9 then Mr. Hicks and Mr. Dille met with you in your office.

10 Evidently they had been talking with one another,
11 and you said there had been some mention of the possibility
12 of Mr. Dille's children participating.

13 My question was at that point in time did you have
14 a sense of how far the discussions had gone? Had they
15 reached any --

16 A As between -- as between?

17 Q Mr. Dille and Mr. Hicks.

18 A I think there were only preliminary discussions at
19 that time.

20 Q Okay.

21 JUDGE CHACHKIN: What are you basing your
22 testimony on? Did you have discussions with people?

23 THE WITNESS: Yes.

24 JUDGE CHACHKIN: With who did you have these
25 discussions?

1 THE WITNESS: I had the discussions -- I had a
2 meeting in my office with Dave Hicks and John Dille.

3 JUDGE CHACHKIN: At the same time?

4 THE WITNESS: At the same time.

5 JUDGE CHACHKIN: When was this?

6 THE WITNESS: September 22.

7 JUDGE CHACHKIN: And what you testified to was
8 based on what was said to you at that meeting on the 22nd?

9 THE WITNESS: Yes.

10 JUDGE CHACHKIN: Go ahead.

11 BY MR. WERNER:

12 Q Now, as of this time had there been any
13 discussions or mention between Mr. Dille and Mr. Hicks about
14 whether Mr. Dille's children would have a right to acquire
15 Mr. Hicks' interest in the company?

16 JUDGE CHACHKIN: We're still talking about the
17 September 22nd conversation; is that correct, Mr. Brown?

18 Counsel's questions, I assume --

19 MR. WERNER: Yes.

20 JUDGE CHACHKIN: -- related --

21 MR. WERNER: Your Honor, yes, I'm specifically
22 referring to the series of conversation that Mr. Brown had
23 with Mr. Hicks and Mr. Dille.

24 JUDGE CHACHKIN: Mr. Brown has only said he had a
25 conversation on September 22nd. Now, if he had other

1 conversation, other things, let's get that on the record so
2 we won't have a jumbled record.

3 MR. WERNER: I believe Mr. Brown's testimony
4 yesterday, Your Honor, had been that he had had
5 conversations with Mr. Hicks and with Mr. Dille in the days
6 before the September 22nd meeting.

7 JUDGE CHACHKIN: Well, how many conversations did
8 you have in all?

9 THE WITNESS: I believe I had two conversations
10 with Mr. Hicks, and one telephone conversation with Mr.
11 Dille before the meeting of September 22.

12 JUDGE CHACHKIN: Go ahead, counsel.

13 BY MR. WERNER:

14 Q To get back to my question, as of this point in
15 time, the September 22nd meeting, had the topic of whether
16 Mr. Dille's children would have an opportunity to acquire
17 Mr. Hicks' interest in company at some point in the future
18 come up at all?

19 A It had come up in the sense that I had raised the
20 question of what were the rights of Dave Hicks in the
21 business venture.

22 Q And how did it come up in that context?

23 A When I was talking with them and getting
24 background information, I wanted to learn what, if any,
25 proposals there were among the owners.

1 Q Okay. Now, at this point in time had Mr. Hicks
2 and Mr. Dille reached any sort of agreement on that point?

3 A To my knowledge, no.

4 Q After the series of meetings had occurred, after
5 your meeting with Mr. Hicks and Mr. Dille on the 22nd, what
6 happened next?

7 A I believe I next received a draft of documents
8 from the attorney for Mr. Booth.

9 Q And what did you do with those?

10 A Circulated those documents to obtain comments from
11 Dave Hicks, from John Dille, and I believe, from Bob Watson.

12 JUDGE CHACHKIN: Who did you represent at this
13 point?

14 THE WITNESS: At this point I thought my
15 representation was the entity that was being -- that was
16 contemplated to be formed to accomplish the purchase.

17 JUDGE CHACHKIN: Not the individuals, but the
18 entity itself?

19 THE WITNESS: The entity itself, and then I was
20 also representing Dave Hicks.

21 JUDGE CHACHKIN: At this time or later?

22 THE WITNESS: At this time.

23 JUDGE CHACHKIN: So you were representing the
24 entity and Hicks --

25 THE WITNESS: Yes.

1 JUDGE CHACHKIN: -- at this time. Okay.

2 BY MR. WERNER:

3 Q Mr. Brown, you just mentioned that you had
4 circulated materials to Mr. Hicks and also to Mr. Watson and
5 Mr. Dille.

6 For what purpose were you sending materials to Mr.
7 Watson and Mr. Dille?

8 A To obtain comments from them as I assumed they
9 were representing the children's interest if the children
10 were going to be owners of the entity.

11 Q How did -- who were you dealing with on Mr.
12 Booth's side?

13 A An attorney at Honigman & Miller, I believe, by
14 the name of Kim Houdulin.

15 Q And what sort of role did Mr. Hicks have in this
16 negotiation process?

17 A Mr. Hicks had the same role that we had had in
18 other business transactions. I would send him documents and
19 he would give me comments, primarily on the business terms.

20 Q And you discussed those comments with him and --

21 A I did.

22 Q -- discuss your own comments?

23 A Yes.

24 Q Now, how did the negotiations with Booth proceed
25 from that point?

1 A After receiving the comments, I believe we marked
2 up the draft document and sent them back to Kim Houdulin,
3 the attorney for Mr. Booth.

4 Q Were there several series of drafts exchanged?

5 A Yes.

6 Q Would you give me some idea of the nature of the
7 documents that you were working on?

8 Certainly there was a purchase agreement.

9 A A purchase agreement, there was a promissory note,
10 there was a pledge, there was a security agreement, and I
11 believe there was an escrow agreement.

12 Q Was there anything in the nature of noncompetition
13 agreement or --

14 A There may have been a noncompetition agreement.

15 Q Now, during the course of these negotiations were
16 you making changes to the deal that Mr. Dille had
17 negotiated? Were you changing the documents in ways that
18 had been set upon in Mr. Dille's negotiations with Mr.
19 Booth?

20 A Yes.

21 Q And what sort of changes were you making?

22 A Well, we made a number of changes to the document.
23 I think changes were made in everyone of the documents.

24 Q Do you recall any sort of -- any specific
25 examples?

1 A I remember the terms of the promissory note were
2 changed. There was also --

3 Q Changed in what way?

4 A There was a period of time when there were to be
5 no payments, and then a balloon payment, and that got
6 changed during the course of those discussions.

7 JUDGE CHACHKIN: In what way?

8 THE WITNESS: In what way?

9 JUDGE CHACHKIN: I thought there was a balloon
10 payment.

11 THE WITNESS: Well, at the end, but this was a
12 rather unusual, as I recall. There was six months no
13 payments. Then there were some payments or there was a
14 period of time when there were to be no payments, and then
15 a, I think it was like \$105,00 payment, which was not the
16 balloon at the end, as it was a little unusual in that
17 respect, but that got changed during the course of these
18 negotiations.

19 BY MR. WERNER:

20 Q Did you propose any other changes that were not
21 accepted by Mr. Dille -- by Mr. Booth? Excuse me.

22 A Yes, I did.

23 Q Do you have any examples of those that you can
24 recall?

25 A Well, for example, the representations and

1 warranties of the seller I thought were rather weak, and we
2 proposed a number of additional representations and
3 warranties, most of which were not accepted.

4 Q And why was that?

5 A Do you recall?

6 A Why they weren't accepted?

7 Q Yes. Do you recall?

8 A The seller didn't want to make additional
9 representations and warranties.

10 Q Did they give you any reason for that?

11 A Not to expose themselves to any additional
12 liability.

13 Q About how long did the negotiations last?

14 A Well, I believe the agreement was signed on
15 November 30th, so October and November.

16 Q So about two months then?

17 A About two months.

18 Q Mr. Brown, now I'd like to direct your attention
19 to one of the documents, please. If you could turn to Mass
20 Media Bureau Exhibit No. 3. It should in Mass Media Bureau
21 Binder No. 1 up there.

22 A You might have to help me here.

23 JUDGE CHACKIN: What page?

24 MR. WERNER: Page 26. Page 26 through 76, but
25 beginning at page 26

1 BY MR. WERNER:

2 Q Have you found that?

3 A I have.

4 Q Do you recognize the document?

5 A Yes.

6 Q Can you tell me what it is?

7 A It appears to be the executed asset purchase
8 agreement dated November 30.

9 Q So this would be the final asset purchase
10 agreement?

11 A Yes.

12 Q I'll ask you to turn to page 66, please. That
13 would be 66 of the exhibit.

14 A I have it.

15 Q It's a document identified as Exhibit
16 2.3(b)(2)(D), identified as the guarantee.

17 Can you tell me what this document was about?

18 A This document was a guarantee of the member owners
19 of the limited liability company on the promissory note.

20 Q And may I fairly assume this was done at Mr.
21 Booth's request?

22 A Yes.

23 Q And how much is the amount of the obligation under
24 the guarantee?

25 A The total guarantee is \$250,0000, allocated among

Heritage Reporting Corporation
(202) 628-4888

1 the owners in accordance with their ownership share.

2 Q So do I understand you correctly that the total
3 amount of the obligation was not joint and severable among
4 the members? Each of the members could not be held liable
5 for the full \$250,000 individually?

6 A Each individual was limited in the amount of the
7 guarantee.

8 Q Under the terms of the guarantee document, what
9 was Mr. Hicks' exposure in the event the guarantee was
10 called upon?

11 A \$127,500.

12 Q And what was the amount of guarantee offered by
13 each of the minority members of the company?

14 A Each of the other owners was \$40,832.

15 Q Now, what were Mr. Booth's remedies in the event
16 of a default under the agreement, under the asset purchase
17 agreement?

18 A Mr. Booth could call upon any guarantor to the
19 amount of their guarantee.

20 Q Now, as of November 30th when the asset purchase
21 agreement was signed, other than certainly agreements such
22 as we're seeing here and signing the guarantee among the
23 members of Hicks Broadcasting, what was the status, as far
24 as you were aware, of any negotiations between Mr. Hicks and
25 the Dille children relative to other arrangements between

1 the members of the company?

2 A Well, the negotiations, there weren't any
3 negotiations at that time, at the end of November.

4 Q Was there a reason for that?

5 A I think all the energy had been focused during
6 October and November on getting the agreement done with Mr.
7 Booth.

8 Q Had there been a decision not to address the
9 shareholder issues because of the need to attend to the --

10 A Well, I had been raising the issue, but it
11 appeared to me that the parties did not wish to deal with it
12 at that time.

13 Q Now, did those deferred issues include such things
14 as any proposal for Mr. Dille's children to have an option
15 to acquire Mr. Hicks' interest in the company?

16 A Yes.

17 Q Mr. Brown, are you aware that in mid-December
18 1993, an assignment application was filed with the FCC on
19 behalf of Hicks Broadcasting to acquire WRBR?

20 A Yes.

21 Q I'm going to ask you to turn in the exhibit that
22 you're now looking at back to page 14. This would be Mass
23 Media Bureau Exhibit No. 3.

24 A I have it.

25 Q Thank you.

1 Have you ever seen this document before?

2 A Yes, I have.

3 Q Can you tell me what it is?

4 A I think it's the application for assignment of the
5 South Bend station.

6 Q Were you asked to review the document before it
7 was filed?

8 A No, I was not.

9 Q That was not part of your job?

10 A That wasn't part of my responsibility, no.

11 Q Now, would you please turn to page 20? Are you
12 there?

13 A I am.

14 Q I'd ask you to look at question 15, please, and
15 take a moment and read it to yourself.

16 Have you finished?

17 A I have.

18 Q Question 15 asks were there any documents,
19 instruments, contracts or understandings relating to
20 ownership or future ownership rights in the station in
21 question, and it identifies examples of such things: non-
22 voting stock interests, beneficial stock ownership
23 interests, and options and warrants, and the like.

24 Now, based upon -- well, first of all, let me ask
25 you what is the response to question 15 that appears on the

1 box to the right of the question?

2 A The "no" box is X'ed; has a check mark in it.

3 Q Now, based upon your knowledge and involvement in
4 the WRBR transaction as of the date that the application was
5 filed, which I can tell you is December 22, 1993, is the
6 response to question 15 that appears on the page in front of
7 you accurate?

8 A Yes.

9 Q So does it accurately -- does it correctly reflect
10 the status of the discussions with respect to any option
11 that the Dille children might have as of December 22, 1993?

12 A Yes.

13 Q Now, based on your knowledge of the transaction,
14 are you aware of any documents that incorporate -- any
15 written documents or contracts or agreements that gave rise
16 to any such option as of December 22nd?

17 A No.

18 Q Was there any oral agreement between the parties
19 as of December 22nd as to an option?

20 A That I'm aware of, no.

21 Q Now, I understand that you weren't asked to review
22 the application, but go with me for a moment here.

23 If Mr. Hicks had asked you to review this, if he
24 had come to you with the application, and asked you how he
25 should respond to this question based on the status of the

1 discussions that had occurred up to that point, what would
2 you have counseled him?

3 JUDGE CHACHKIN: This is all speculation, sir.

4 The fact of the matter is he didn't come to him. He didn't
5 counsel him. What are we dealing with a hypothetical for?

6 MR. WERNER: I believe that Mr. Brown can express
7 his opinion as Mr. Hicks' attorney as to what his conclusion
8 would have been concerning the question.

9 JUDGE CHACHKIN: It's irrelevant. I'm not going
10 to allow the question. That's speculation. He didn't even
11 review it. He didn't counsel him.

12 BY MR. WERNER:

13 Q Let me ask this -- well, after the asset purchase
14 agreement was finalized and the application was filed, what
15 was your next involvement in the transaction?

16 A I don't believe anything happened until they
17 informed us that the Commission during the time permitted
18 would make a decision on the application.

19 Q And was there anything done during that period
20 based upon that?

21 A No.

22 Q And who was involved in the work at this stage?

23 A I was; my colleague, Steve Stankewicz; and an
24 Indiana law firm, Barnes & Thornburg.

25 Q Now, who are Barnes & Thornburg?

1 A Barnes & Thornburg is a large Indiana law firm.

2 Q And how is it that they came to be working on the
3 transaction at that time?

4 A In, I believe, February, the decision was made to
5 have an Indiana limited liability company because this was a
6 small, pretty small station and it didn't make sense to have
7 a company organized in a different state. Limited
8 liabilities company, I believe the Indiana limited liability
9 statute was particularly brand new at that time, and we
10 certainly didn't feel qualified to organize an Indiana
11 limited liability company.

12 Q When you say "we," you're referring to Miller
13 Canfield?

14 A Yes.

15 Q Now, how was the decision made to make it a
16 limited liability company?

17 A Well, that was a tax-driven decision, and as I
18 say, the limited liability company was relatively new at
19 that time. They're taxed as a partnership. It was decided
20 that that would be more desirable than, for example, a Sub
21 Chapter S corporation.

22 Q Did you have your tax colleagues look at this --

23 A Yes.

24 Q -- or someone else?

25 A Yes. Yes.

1 Q Now, how was it that Barnes & Thornburg, in
2 particular, was retained to do the work?

3 A I can't remember whether I recommended Barnes &
4 Thornburg or whether Mr. Watson selected Barnes & Thornburg,
5 but I remember they got selected.

6 Q Were you familiar with Barnes & Thornburg at the
7 time?

8 A Yes, sir.

9 Q And what was your acquaintance with them? What
10 did you know of them?

11 A I have several classmates that are partners there.
12 I've worked with the firm for 30 plus years.

13 Q So you had worked with the firm previously?

14 A Yes.

15 Q And what was your estimation of their
16 capabilities?

17 A I think, as I said, in my opinion, they are a very
18 good firm.

19 Q Now, what was your role in the process of
20 following and getting these documents ready for closing?

21 A We were working on the closing documents and
22 Barnes & Thornburg was going to draft the operating, what's
23 called the operating agreement for a limited liability
24 company.

25 Q And you have mentioned that perhaps Bob Watson had

1 a role in Barnes & Thornburg's selection. Did he have a
2 role in the work on the operating agreement?

3 A Yes, he did.

4 Q And what was that?

5 A He was looking at it as -- and making comments to
6 it.

7 Q I think you had testified before that Mr. Watson
8 and Mr. Dille had been participating in the earlier stages
9 of this transaction on behalf of Mr. Dille's children.

10 Was that still Mr. Watson's role?

11 A Yes, it was.

12 Q You had indicated earlier that all the shareholder
13 issues except those that were directly related to the asset
14 purchase agreement and its related documents had been
15 deferred.

16 At some point in this later series of discussions
17 that we're talking about now, did the proposal for the Dille
18 children have some sort of a right to future ownership of
19 Mr. Hicks' interest resurface?

20 A Yes, it did.

21 Q When did it come up again?

22 A Well, I was looking for it in the operating
23 agreement, which is a place where it would normally appear,
24 could appear. Some limited liability companies have a
25 number of agreements like shareholder agreements, but